



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

October 8, 1971

Honorable Andy James
Administrator
Texas Real Estate Commission
1101 State Finance Building
Austin, Texas 78711

Opinion No. M-970

Re: Disposition of that
portion of real estate
broker and salesman
license fees dedicated
to the Real Estate Re-
search Center at Texas
A & M University by
Section 24a of Article
6573a, V.C.S.

Dear Mr. James:

In your recent letter to this office you pointed out that Senate Bill No. 338, Acts 62nd Legislature, Regular Session, 1971, Chapter 256, page 1140, created at Texas A & M University, in the College of Agriculture, a Real Estate Research Center. This same Act amended the Real Estate License Act, Article 6573a, Vernon's Civil Statutes, by increasing the broker and salesman license fees and dedicating one-half of such fees to be used for the support and maintenance of the Real Estate Research Center at Texas A & M University. Your letter goes on to state that the Comptroller of Public Accounts has advised the Texas Real Estate Commission that in the event the Commission deposits all of the receipts for licensing fees in the State Treasury, the Comptroller will not issue warrants payable to Texas A & M University for one-half of these license fees because he feels that he is not authorized by law to do so. Bearing these facts in mind you request the opinion of this office upon the following questions:

1. "Whether the State Comptroller would be authorized by law to draw warrants upon the State Treasurer payable to Texas A & M University upon requisition of the Commission.

2. "Should your opinion be negative, the Commission requests your opinion as to whether the Commission may open a bank account in its name, deposit all monies received in such bank

account, write checks on such account payable to Texas A & M University to transmit one-half of the fees in accordance with Section 24a of Senate Bill 338 and write a check on such account payable to the State Treasurer for the balance remaining in said account."

Section 6 of Senate Bill No. 338 amends Section 22 of the Real Estate License Act (Article 6573a, Vernon's Civil Statutes) so as to increase the fee for filing of either an original application or renewal application for real estate broker from \$10.00 to \$20.00 and the fee for filing of an original or renewal application for real estate salesman from \$5.00 to \$10.00. Section 7 of Senate Bill No. 338 amends Section 24 of the Real Estate License Act, and the relevant portion thereof reads as follows:

"Sec. 24. (a) Ten Dollars (\$10.00) received by the commission for the filing of broker license renewal applications and Five Dollars (\$5.00) received by the commission for the filing of real estate salesman license renewal applications shall be transmitted to Texas A & M University for deposit in a separate account shall be expended for the support and maintenance of the Real Estate Research Center and for carrying out the purposes, objectives, and duties of the Center.

"(b) Except as provided in Subsection (a) of this section all moneys derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for the use of the commission in the administration of the Act upon requisition of the commission. . . ."

It is clear from the provisions of Section 24a as amended by Senate Bill No. 338 that the Legislature has dedicated one-half of the filing fee for renewal applications of real estate broker and real estate salesman licenses to the special purpose of the maintenance and support of the Real Estate Research Center at Texas A & M University. However, reference to the General Appropriations Act for

the current fiscal year shows that no appropriation was made by the Legislature for the support and maintenance of the Real Estate Research Center. Section 6 of Article VIII of the Constitution of Texas provides that, "no money shall be drawn from the Treasury, but in pursuance of specific appropriation made by law;. . .". Therefore, once the fees for license renewal for brokers and salesman have been placed in the State Treasury, the Comptroller of Public Accounts would have no authority to make a warrant payable to Texas A & M University in the amount of one-half of such renewal fees. Manion v. Lockhart, 131 Tex. 175, 114 S.W.2d 216 (1938). This prohibition also applies to funds dedicated to a special purpose. Attorney General's Opinion O-700 (1939). We therefore answer your first question in the negative.

Turning to your second question, we find nothing in the provisions of the Real Estate License Act, as amended by Senate Bill No. 338, which would authorize the Real Estate Commission to deposit the fees received by it under the Real Estate License Act in a local bank account and make a division of those fees between the State Treasury and Texas A & M University. Neither do we find any language in the Real Estate License Act which necessarily implies such authority on the part of the Commission. Therefore, we also answer your second question in the negative.

It is mandatory that one-half of the license fees be deposited in the State Treasury and that the other one-half be transmitted to Texas A & M University. This duty may be performed by placing all the license fees in the hands of the State Treasurer for proper distribution by him pursuant to Article 4393a, Vernon's Civil Statutes.

SUMMARY

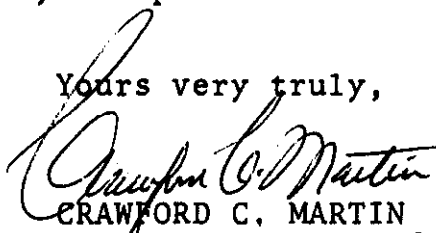
Absent a specific appropriation, Section 6, Article VIII, Texas Constitution, prohibits the Comptroller of Public Accounts from issuing a warrant payable to Texas A & M University in the amount of one-half of the real estate broker and salesman renewal licenses fees received by the Real Estate Commission in accordance with Section 24a of Article 6573a, V.C.S.

The Real Estate Commission has no authority

either express or implied, to deposit such license renewal fees in a local bank and then transmit one-half to Texas A & M University and one-half to the State Treasury.

It is mandatory that one-half of the license fees be deposited in the State Treasury and that the other one-half be transmitted to Texas A & M University. This duty may be performed by placing all the license fees in the hands of the State Treasurer for proper distribution by him pursuant to Article 4393a, V.C.S.

Yours very truly,



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